

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.: 15037US02

PATENT

In the Application of:)	
)	
Jeyhan Karaoguz, et al.)	<u>Electronically Filed On March 11, 2009</u>
)	
Serial No.: 10/675,436)	
)	
Filed: September 30, 2003)	
)	
For: MEDIA PROCESSING SYSTEM)	
COMMUNICATING ACTIVITY)	
INFORMATION TO SUPPORT USER)	
AND USER BASE PROFILING AND)	
CONSUMPTION FEEDBACK)	
)	
Examiner: Duffield, Jeremy S.)	
)	
Group Art Unit: 2427)	
)	
Confirmation No.: 5627)	

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicants respectfully request that the Board of Patent Appeals and Interferences reverse the final rejection of claims 1-37 of the present application. This Appeal Brief is timely because it is being filed with a Request for One Month Extension of Time along with a Notice of Appeal. Thus, the period for response runs until March 25, 2009.

REAL PARTY IN INTEREST
(37 C.F.R. § 41.37(c)(1)(i))

The real party in interest is Broadcom Corporation, having a place of business at 16215 Alton Parkway, Irvine, California 92619.

RELATED APPEALS AND INTERFERENCES
(37 C.F.R. § 41.37(c)(1)(ii))

Not applicable.

STATUS OF THE CLAIMS
(37 C.F.R. § 41.37(c)(1)(iii))

The present application includes claims 1-37. These claims stand rejected.¹ The Applicants identify claims 1-37 as the claims that are being appealed. The text of the claims involved in this Appeal, namely, claims 1-37, is provided in the Claims Appendix.

STATUS OF AMENDMENTS
(37 C.F.R. § 41.37(c)(1)(iv))

Subsequent to the final rejection of claims 1-37 mailed November 25, 2008, the Applicants filed a Response.² The Response did not amend any of the claims.³

¹ See November 25, 2008 Office Action and January 27, 2009 Advisory Action.

² See January 15, 2009 Response Under 37 C.F.R. § 1.116.

³ See *id.*

SUMMARY OF CLAIMED SUBJECT MATTER
(37 C.F.R. § 41.37(c)(1)(v))

Independent claim 1 recites the following:

A method of communicating activity information to support user and user base profiling and consumption feedback in a communication network,⁴ the method comprising:

establishing at a first location,⁵ from a second location, at least one parameter⁶ related to monitoring media consumption activity of a user at the first location;⁷

receiving, at the first location, a media request from the user,⁸ the requested media⁹ having an associated set¹⁰ of pre-defined characteristics;¹¹

determining, at the first location, whether the associated set of pre-defined characteristics matches the at least one parameter;¹²

sending notification of the media request to a second location, via a communication network,¹³ if the determining results in a match;¹⁴ and

refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match.¹⁵

⁴ See present application, *e.g.*, at page 5, lines 2-4, page 14, lines 2-6, page 21, line 20 to page 22, line 13 and Figure 2.

⁵ See *id.*, *e.g.*, at page 5, lines 17-19.

⁶ See *id.*, *e.g.*, at page 6, lines 7-12.

⁷ See *id.*, *e.g.*, at page 5, lines 4-7.

⁸ See *id.*, *e.g.*, at page 5, lines 7-8.

⁹ See *id.*, *e.g.*, at page 6, lines 3-6.

¹⁰ See *id.*, *e.g.*, at page 6, lines 13-16.

¹¹ See *id.*, *e.g.*, at page 5, lines 8-9.

¹² See *id.*, *e.g.*, at page 5, lines 9-11.

¹³ See *id.*, *e.g.*, at page 5, line 19 to page 6, line 3.

¹⁴ See *id.*, *e.g.*, at page 5, lines 11-14, and page 19, line 1 to page 21, line 19.

Independent claim 9 recites the following:

A method of communicating activity information to support user and user base profiling and consumption feedback in a communication network,¹⁶ the method comprising:

establishing at a first location,¹⁷ from a second location, at least one parameter¹⁸ related to monitoring media consumption activity of a user at the first location;¹⁹

receiving, at the second location via the communication network,²⁰ notification of a media request by the user at the first location,²¹ the requested media²² having an associated set of pre-defined characteristics²³ matching the at least one parameter;²⁴

creating at least one record of the media request, at the second location;²⁵ and

sharing information derived from the at least one record with a third²⁶ party.²⁷

¹⁵ See *id.*, e.g., at page 5, lines 14-16, and page 19, line 1 to page 21, line 19.

¹⁶ See *id.*, e.g., at page 6, lines 17-19 and page 14, lines 2-6, page 14, lines 2-6, page 21, line 20 to page 22, line 13 and Figure 2.

¹⁷ See *id.*, e.g., at page 7, lines 7-10.

¹⁸ See *id.*, e.g., at page 7, line 18 to page 8, line 2.

¹⁹ See *id.*, e.g., at page 6, lines 19-22.

²⁰ See *id.*, e.g., at page 7, lines 11-15.

²¹ See *id.*, e.g., at page 7, lines 1-3.

²² See *id.*, e.g., at page 7, lines 16-18.

²³ See *id.*, e.g., at page 8, lines 3-6.

²⁴ See *id.*, e.g., at page 7, lines 3-4, and page 19, line 1 to page 21, line 19.

²⁵ See *id.*, e.g., at page 7, lines 4-6.

²⁶ See *id.*, e.g., at page 8, lines 6-8.

Independent claim 19 recites the following:

A system supporting communication of activity information to support user and user base profiling and consumption feedback in a communication network,²⁸ the system comprising:

a television display²⁹ at a first location;

a storage for storing media,³⁰ at the first location, the storage having an associated³¹ network address;³²

a user interface accessible via the television display,³³ the user interface supporting the selection of media³⁴ for consumption;³⁵

set top box circuitry,³⁶ at the first location, communicatively coupled to the storage to support consumption of the selected media;³⁷ and

server software³⁸ that receives, via a communication network,³⁹ data comprising the associated network address, a user identifier, and information related to the media selected for consumption,⁴⁰ and responds by storing at least a portion of the received data,⁴¹ the server

²⁷ See *id.*, e.g., at page 7, lines 6-7.

²⁸ See *id.*, e.g., at page 8, lines 9-12, page 14, line 2 to page 21, line 19 and Figures 1A, 1B and 1C.

²⁹ See *id.*, e.g., at page 8, lines 12-13, page 15, lines 10-13 and Figure 1A, refs 103 or 107.

³⁰ See *id.*, e.g., at page 8, lines 12-14 and page 24, lines 9-12.

³¹ See *id.*, e.g., at page 9, lines 7-9 and page 15, lines 4-8.

³² See *id.*, e.g., at page 8, line 14 and page 15, lines 4-8.

³³ See *id.*, e.g., at page 8, lines 14-16.

³⁴ See *id.*, e.g., at page 9, lines 4-7 and page 19, lines 14-18.

³⁵ See *id.*, e.g., at page 8, lines 16-17 and page 19, lines 21-22.

³⁶ See *id.*, e.g., at page 8, lines 17-18, page 15, lines 9-10, page 32, lines 10-13 and Figure 1A, refs. 102 or 106.

³⁷ See *id.*, e.g., at page 8, lines 17-19, page 31, lines 19 to page 32, line 5 and Figure 9, ref. 913.

³⁸ See *id.*, e.g., at page 8, lines 19-21 and page 33, line 8 to page 34, line 4.

³⁹ See *id.*, e.g., at page 9, lines 10-14 and Figure 3, ref. 304.

⁴⁰ See *id.*, e.g., at page 8, line 21 to page 9, line 2.

⁴¹ See *id.*, e.g., at page 9, lines 3-4.

software sending notification of a media request to a second location based on a determination as to whether a set of pre-defined characteristics⁴² associated with the requested media matches at least one parameter⁴³ related to monitoring media consumption activity at the first location.⁴⁴

Independent claim 28 recites the following:

A system supporting communication of activity information to support user and user base profiling and consumption feedback in a communication network,⁴⁵ the system comprising:

set top box circuitry,⁴⁶ at a first location, communicatively coupled to storage⁴⁷ having an associated network address,⁴⁸ at the first location, to support consumption of media selected via a user interface⁴⁹ accessible via a television⁵⁰ display;⁵¹ and

software⁵² that receives, via a communication network,⁵³ data comprising the associated network address, a user identifier, and information related to the media selected for consumption,⁵⁴ and responds by storing at least a portion of the received data,⁵⁵ the software sending notification of a media request to a second location based on a determination as to

⁴² See *id.*, e.g., at page 6, lines 13-16.

⁴³ See *id.*, e.g., at page 9, lines 14-21.

⁴⁴ See *id.*, e.g., at page 5, lines 11-16, and page 19, line 1 to page 21, line 19.

⁴⁵ See *id.*, e.g., at page 8, lines 9-12, page 14, line 2 to page 21, line 19 and Figures 1A, 1B and 1C.

⁴⁶ See *id.*, e.g., at page 8, lines 17-18, page 15, lines 9-10, page 32, lines 10-13 and Figure 1A, refs. 102 or 106.

⁴⁷ See *id.*, e.g., at page 8, lines 12-14 and page 24, lines 9-12.

⁴⁸ See *id.*, e.g., at page 8, line 14 and page 15, lines 4-8.

⁴⁹ See *id.*, e.g., at page 8, lines 14-16.

⁵⁰ See *id.*, e.g., at page 8, lines 12-13, page 15, lines 10-13 and Figure 1A, refs. 103 or 107.

⁵¹ See *id.*, e.g., at page 8, lines 16-17 and page 19, lines 21-22.

⁵² See *id.*, e.g., at page 8, lines 19-21 and page 33, line 8 to page 34, line 4.

⁵³ See *id.*, e.g., at page 9, lines 10-14 and Figure 3, ref. 304.

⁵⁴ See *id.*, e.g., at page 8, line 21 to page 9, line 2.

⁵⁵ See *id.*, e.g., at page 9, lines 3-4.

whether a set of pre-defined characteristics⁵⁶ associated with the requested media matches at least one parameter⁵⁷ related to monitoring media consumption activity at the first location.⁵⁸

GROUND OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. § 41.37(c)(1)(vi))

- Claims 1-37 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. 2002/0112239 (“Goldman”).

ARGUMENT
(37 C.F.R. § 41.37(c)(1)(vii))

As noted, claims 1-37 stand rejected as being anticipated by Goldman. “A claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in **a single prior art reference.**” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). “The **identical** invention must be shown in as complete detail as is contained in ... the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989) (emphasis added).

As explained below, Goldman does not anticipate any of the pending claims because Goldman fails to describe, teach or suggest at least “sending notification of the media request to a second location, via a communication network, if the determining results in a match;” and “refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match.”

⁵⁶ See *id.*, e.g., at page 6, lines 13-16.

⁵⁷ See *id.*, e.g., at page 9, lines 14-21.

⁵⁸ See *id.*, e.g., at page 5, lines 11-16, and page 19, line 1 to page 21, line 19.

I. Goldman Does Not Anticipate Claims 1-8

Independent claim 1 recites, in part, the following:

determining, at the first location, whether the associated set of pre-defined characteristics [associated with the requested media] matches the at least one parameter [related to monitoring media consumption activity of the user at the first location];

sending notification of the media request to a second location, via a communication network, if the determining results in a match; and

refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match.

On the other hand, Goldman “relates to displaying information to viewers regarding the number of other viewers who are watching specified television programs.” *See* Goldman at [0003]. In particular, Goldman “relates to using a back channel to gather statistics relating to real time viewing behavior and using the gathered information to modify electronic program guides (EPGs) so as to inform viewers of the number of other viewers who are watching the television programs.” *See id.* In short, television viewing habits are assessed, and collective viewing stats are shown on EPGs. *See id.* at [0009] (“The present invention relates to systems and methods for utilizing a back channel as a feedback system to reveal what other television viewers are watching at a given moment”).

In Goldman, home entertainment systems track whether a broadcast is viewed or recorded.

Home entertainment system 90 tracks each time broadcast 88 is output, recorded or otherwise utilized at home entertainment system 90, by generating viewer behavior information to indicate that the broadcast 88 was output, recorded or otherwise utilized at home entertainment system 90.

Id. at [0031]. EPGs are then updated and modified based on viewer behavior information. *See id.*, e.g., at [0044] (“once the viewing behavior information is received at the clearinghouse system 100, a processor 102 processes the information and/or makes the information available to modify the display of the EPGs of viewers in the system”).

Thus, Goldman discloses a system in which viewer television habits are monitored, and those habits are compiled to update electronic program guides. The Applicants respectfully submit, however, that Goldman does not describe, teach or suggest “determining, at the first location, whether the associated set of pre-defined characteristics [associated with the **requested media**] matches the at least one parameter [related to monitoring media consumption activity of the user at the first location]; **sending notification of the media request** to a second location, via a communication network, if the determining results in a match; and **refraining from sending a notification of the media request** to the second location, via the communication network, if the determining does not result in a match,” as recited in claim 1.

There simply is nothing in Goldman that describes, teaches or suggests sending notification of a media request to a second location if an associated set of pre-defined characteristics associated with the requested media matches a parameter related to monitoring media consumption activity of a user at a first location. Further, there is nothing in Goldman that describes, teaches or suggests refraining from sending such a notification. Moreover, the Office Action has not shown where any cited reference describes, teaches or suggest such limitations. Thus, for at least these reasons, the Applicants respectfully submit that Goldman does not anticipate claims 1-8.

Nevertheless, the Office Action cites the following:

Goldman teaches tracking viewer behavior regarding the outputting, recording, etc. of a broadcasted video at a home entertainment system. An operator at a remote clearinghouse can determine the desired types of information to be included in the viewer behavior information. When a user at the home entertainment system requests a program from the program guide, predetermined characteristics of the program, i.e. channel ID, program ID, title, etc., are recorded. The remotely requested characteristics are matched against the characteristics recorded at the home entertainment system and when found, the matched data is sent to the clearinghouse. **If there is no match in a requested characteristic and a recorded characteristic, then the data is not sent to the clearinghouse (Para. 27-29, 35-37).** The claimed “media request” is taught by the viewing information containing, among a plurality of data, the channel ID, subscriber ID, program ID, and the current date and time. This shows the channel and program requested by the subscriber who requested it at the date and time it was requested. Therefore, the aforementioned limitation is taught by Goldman.

See November 25, 2008 Office Action at pages 2-3 (emphasis added). The Advisory Action sets forth a similar argument. *See* January 27, 2009 Advisory Action at page 2.

As shown above, the Office Action makes a series of assertions regarding what Goldman discloses. The Office Action cites portions of Goldman as support for these various assertions. In particular, as shown above, the Office Action relies on only paragraphs 27-29 and 35-37 to support the various statements above. Moreover, the Office Action equates “viewing information” with a “media request.” Further, the Office Action cites Goldman at reference 90 as the 1st location and reference 100 as the 2nd location. *See* November 25, 2008 at pages 3-4. The Applicants do not concede that these conclusory assumptions in the Office Action equate to the claim limitations.

Nevertheless, based on these statements, the Office Action reads claim 1, for example, as follows:

determining, at the first location **90**, whether the associated set of pre-defined characteristics [associated with the **viewing information**] **matches** the at least one parameter [related to monitoring media consumption activity of the user at the first location **90**];

sending notification of the **viewing information** to a second location **100**, via a communication network, if the determining results in a **match**; and

refraining from sending a notification of the **viewing information** to the second location **100**, via the communication network, if the determining does not result in a **match**.

As explained below, however, there is nothing in Goldman that describes, teaches or suggests that a determination is made at the home entertainment system 90 as to whether a set of characteristics of the viewing information **matches** anything, let alone a parameter related to monitoring activity of a user at the home entertainment system.

Goldman discloses that the “[h]ome entertainment system 90 tracks each time broadcast 88 is output, recorded or otherwise utilized at home entertainment system 90, by **generating viewer behavior information** to indicate that the broadcast 88 was output, recorded or otherwise utilized at home entertainment system 90.” *See* Goldman at [0031]. Thus, Goldman clearly states that the home entertainment system **generates** the **viewer behavior information**, which the Office Action seemingly construes as a “media request.” *See* November 25, 2008 Office Action at page 2 (“The claimed ‘media request’ is taught by the viewing information...”). However, **there is absolutely nothing in Goldman that describes, teaches or suggests that the home entertainment system determines whether that viewer behavior information matches anything.** Instead, the home entertainment system merely generates the viewer behavior information. *See* Goldman at [0031].

Goldman does disclose, however, that “[o]nce an event occurs, home entertainment system 90 couples the occurrence of the event with information specific to the program output, recorded, or otherwise utilized.” *See id.* at [0036]. Again, however, Goldman merely states that it generates viewer behavior information, but not that the system 90 determines whether that viewer information **matches** anything. Thus, for at least this reason, the Applicants respectfully request reconsideration of the claim rejections.

As shown above, independent claim 1 specifically recites “determining, at the first location, whether the associated set of pre-defined characteristics [associated with the requested media] matches the at least one parameter [related to monitoring media consumption activity of the user at the first location]; **sending notification of the media request** to a second location, via a communication network, if the determining results in a match; and **refraining from sending a notification of the media request** to the second location, via the communication network, if the determining does not result in a match.” Thus, the claim is clear that if a determination is made **at the first location** that an associated set of **pre-defined characteristics associated with requested media match at least one parameter related to monitoring media consumption activity** of the user **at the first location**, then notification of **the media request** is sent to **a second location**. If there is no match, then no notification is sent.

As explained in detail above, Goldman merely discloses a system in which viewer television habits are monitored, and those habits are compiled to update electronic program guides. However, as shown above, the Office Action cites Goldman at ¶¶ [0027]-[0029] and [0035]-[0037] as somehow disclosing the limitations of claim 1 reproduced above. *See* November 25, 2008 Office Action at pages 2-3. In particular, the Office Action specifically

relies on Goldman at ¶¶ [0036] and [0037] as disclosing “matching” predefined characteristics associated with requested media with at least one parameter related to monitoring media consumption activity of the user at the first location. *See id.* at page 4.

While Goldman discloses that the “system tracks viewer behavior information at the television and transmits the tracked information in either real time or nearly so via a back channel,” there simply is nothing in Goldman at [0027]-[0029] that describes, teaches or suggests determining at a first location whether information regarding a media request matches anything. As noted above, the Office Action cites system 90 as the “first location” and the “viewer information” as a “media request.” Without conceding the propriety of these substitutions, **the Office Action has not shown that the system 90 determines if any match exists, let alone one between the viewer behavior information and anything else.**

Moving on, Goldman at ¶ [0035] discloses the following:

Therefore, information **describing the viewing behavior (e.g., tuning, display, recording, scheduled recording, or setting a reminder) associated with particular television programs is tracked at home entertainment system 90.** The tracking may be initiated upon the occurrence of an event performed by a viewer of home entertainment system 90. In this description and in the claims, the term “event” encompasses an instructional input received by a home entertainment system, whereby video data corresponding to broadcast 88 is output, recorded or otherwise utilized at home entertainment system 90. The input may be entered by the viewer or some other source. The term “event” also extends to other changes in programming displayed on the home entertainment system without viewer input, one example being the beginning of a scheduled program on an already-tuned channel.

Id. at ¶ [0035] (emphasis added). This portion of Goldman merely describes that information describing viewing behavior, such as tuning, display, recording, scheduling, etc., is tracked at a home entertainment system. **Notably, the viewing behavior at the home is tracked at the**

home entertainment system. That is, the viewing and tracking occur at the same location. While this portion of Goldman discloses tracking viewing behavior at the same location as the viewing, it does not describe, teach or suggest “determining, at the first location, whether the associated set of pre-defined characteristics [associated with the requested media] matches the at least one parameter [related to monitoring media consumption activity of the user at the first location]; sending notification of the media request to a second location, via a communication network, if the determining results in a match; and refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match,” as recited in claim 1. In general, this portion of Goldman, while disclosing tracking, does not describe, teach or suggest sending notification (or refraining from sending notification) of a media request based on a determination of whether a match exists.

Next, Goldman at ¶ [0036] states the following:

Once an event occurs, home entertainment system 90 **couple**s the occurrence of the event with information specific to the program output, recorded, or otherwise utilized. This may include, for example, **coupling** unique IDs from an EPG to an occurrence of an event. The IDs identify such information as the program viewed and the channel tuned. Thus, a processor 94 at home entertainment system 90 that is coupled with computer-executable instructions represents one example of means for generating viewer behavior.

Id. at ¶ [0036]. Thus, when an event, which is an “instructional input received by a home entertainment system, whereby video data corresponding to broadcast is output, recorded or otherwise utilized at the home entertainment system” (*see id.* at [0035]) occurs, the home entertainment system 90 **couple**s the event with information specific to the program output, recorded or otherwise utilized. That is, the home entertainment system merely connects the event with information regarding the program output. Goldman does not describe, teach or

suggest, however, that the home entertainment system **determines** if a **match** exists. Instead, it merely discloses that the event is coupled to information. In general, this **coupling** of Goldman is a “means for generating viewer behavior.” Further, the “instructional input,” such as video data being output, recorded or otherwise utilized, **is an action, but not a request.**

Neither this portion, nor the remainder, of Goldman, describes, teaches or suggests “determining, at the first location, whether the associated set of pre-defined characteristics [associated with the requested media] **matches** the at least one parameter [related to monitoring media consumption activity of the user at the first location]; **sending notification of the media request** to a second location, via a communication network, if the determining results in a match; and **refraining from sending a notification of the media request** to the second location, via the communication network, if the determining does not result in a match,” as recited in claim 1.

Next, Goldman at ¶ [0037] states the following:

Depending on the type and volume of viewer behavior information that is desired to be tracked, **specific data corresponding to the broadcast can be requested remotely.** In general, the type of viewer behavior is at least sufficiently detailed to enable the system to determine the television program, if any, that is being displayed on the television. For example, the operator of central clearinghouse 80 to which the viewer behavior information is to be sent might decide that the desired types of information from the EPG that are to be included in the viewer behavior information are a channel ID, a subscriber ID, a program ID and title, the city and state of the channel, and the current date and time. Thus for each event, the foregoing information contained in the appropriate data fields of the EPG and information otherwise maintained at the home entertainment system is identified and stored as an instance of viewer behavior information.

Id. at ¶ [0037]. This portion of Goldman discloses that specific data corresponding to a broadcast can be requested, depending on the type and volume of viewer behavior. Information

such as channel ID, subscriber ID, program ID, etc. may be stored. However, [0037], [0039], and the rest of **Goldman** do not describe, teach or suggest that this “requested” data is in any way sent (or not sent) to another location based on a determination if a match exists between one set of information and another set of information. That is, Goldman does not describe, teach or suggest “determining, at the first location, whether the associated set of pre-defined characteristics [associated with the requested media] matches the at least one parameter [related to monitoring media consumption activity of the user at the first location]; **sending notification of the media request** to a second location, via a communication network, if the determining results in a match; and refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match,” as recited in claim 1.

To summarize, the Office Action fails to show where any cited reference describes, teaches or suggests:

- **determining** at a **first location** whether a set of pre-defined characteristics associated with requested media matches a parameter related to monitoring media consumption activity of the user at the first location,
- sending notification of a media **request** (not consumption, *per se*, of the media) to a **second location** if the determination **results in a match**, or
- refraining from sending notification of a media **request** (not consumption, *per se*, of the media) if the determination **does not result in a match**.

Moreover, Goldman discloses that information about every “event” (viewing, recording, scheduling, etc.) is stored, and that **only certain information** about every stored event (i.e., all

events that occur) is **sent to another location**. Thus, even if one were to assume that such were a notification (which the Office Action does, but the Applicants do not), Goldman does not describe, teach or suggest refraining from sending such a notification. The Applicants respectfully submit that storing all events and sending back **only** information about **certain selected aspects of each and every event** is different than only sending back information about certain events (i.e., requests for media whose “associated set of pre-defined characteristics” matches “at least one parameter”), but refraining from sending back information about other events, as recited in the pending claims.

The Applicants reiterate that a “claim is anticipated only if **each and every element** as set forth in the claim is found, either expressly or inherently described, in **a single prior art reference**.” *Verdegaal Bros.*, 814 F.2d at 631, 2 USPQ2d at 1053 (emphasis added). Moreover, the “**identical** invention must be shown in as complete detail as is contained in ... the claim.” *Richardson* 868 F.2d at 1236, 9 USPQ2d at 1920 (emphasis added). As detailed above, however, Goldman does not describe, teach or suggest “each and every element” of the claims, nor does it show the “identical invention... in as complete detail as is contained in... the claim.” The Applicants have demonstrated above that the portions of Goldman relied on by the Office Action do not describe, teach or suggest the limitations of claim 1, reproduced above. Thus, for at least these reasons, the Applicants respectfully submit that the Office Action has not established a *prima facie* case of anticipation with respect to claims 1-8. Indeed, Goldman does not anticipate these claims.

II. Goldman Does Not Anticipate Claims 9-18

Claim 9 recites, in part, “receiving, at the second location via the communication network, **notification of a media request** by the user, at the first location, the requested media having an associated set of pre-defined characteristics matching the at least one parameter.” For at least the reasons discussed above, the Applicants respectfully submit that Goldman does not describe, teach or suggest this limitation. Thus, the Office Action has not established a *prima facie* case of anticipation with respect to claims 9-18. Indeed, Goldman does not anticipate claims 9-18 for at least this reason.

III. Goldman Does Not Anticipate Claims 19-27

Claim 19 recites, in part, “the server software sending notification of a media request to a second location based on a determination as to whether a set of pre-defined characteristics associated with the requested media matches at least one parameter related to monitoring media consumption activity at the first location.” For at least the reasons discussed above, the Applicants respectfully submit that Goldman does not describe, teach or suggest this limitation. Thus, the Office Action has not established a *prima facie* case of anticipation with respect to claims 19-27. Indeed, Goldman does not anticipate claims 19-27 for at least this reason.

IV. Claims 28-37

Claim 28 recites, in part, “the software sending notification of a media request to a second location based on a determination as to whether a set of pre-defined characteristics associated with the requested media matches at least one parameter related to monitoring media consumption activity at the first location.” For at least the reasons discussed above, the Applicants respectfully submit that Goldman does not describe, teach or suggest this limitation.

Thus, the Office Action has not established a *prima facie* case of anticipation with respect to claims 28-37. Indeed, Goldman does not anticipate claims 28-37 for at least this reason.

V. Conclusion

For at least the reasons discussed above, the Applicants respectfully submit that the pending claims are allowable in all respects with respect to the cited art. Therefore, the Board is respectfully requested to reverse the rejections of pending claims 1-37.

PAYMENT OF FEES

The Commissioner is authorized to charge any necessary fees, including the \$540 fee for this Appeal Brief, the \$540 fee for the Notice of Appeal and the \$130 fee for the one month extension, or credit overpayment to Deposit Account 13-0017.

Respectfully submitted,

Dated: March 11, 2009

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CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. A method of communicating activity information to support user and user base profiling and consumption feedback in a communication network, the method comprising:

establishing at a first location, from a second location, at least one parameter related to monitoring media consumption activity of a user at the first location;

receiving, at the first location, a media request from the user, the requested media having an associated set of pre-defined characteristics;

determining, at the first location, whether the associated set of pre-defined characteristics matches the at least one parameter;

sending notification of the media request to a second location, via a communication network, if the determining results in a match; and

refraining from sending a notification of the media request to the second location, via the communication network, if the determining does not result in a match.

2. The method of claim 1 wherein the first location is associated with one or more of an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number (ESN).

3. The method of claim 1 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

4. The method of claim 1 wherein the communication network is the Internet.

5. The method of claim 1 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data.

6. The method of claim 1 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

7. The method of claim 1 wherein the at least one parameter comprises a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, a language, information identifying the user, information indicating whether the user may be contacted, and information indicating how information related to the media request may be used.

8. The method of claim 1 wherein the associated set of pre-defined characteristics comprises one or more of a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, and/or a language.

9. A method of communicating activity information to support user and user base profiling and consumption feedback in a communication network, the method comprising:

establishing at a first location, from a second location, at least one parameter related to monitoring media consumption activity of a user at the first location;

receiving, at the second location via the communication network, notification of a media request by the user at the first location, the requested media having an associated set of pre-defined characteristics matching the at least one parameter;

creating at least one record of the media request, at the second location; and

sharing information derived from the at least one record with a third party.

10. The method of claim 9 wherein the first location is associated with one or more of an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number (ESN).

11. The method of claim 9 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

12. The method of claim 9 wherein the communication network is the Internet.

13. The method of claim 9 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data.

14. The method of claim 9 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

15. The method of claim 9 wherein the at least one parameter comprises a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, a language, information identifying the user, information indicating whether the user may be contacted, and information indicating how information related to the media request may be used.

16. The method of claim 9 wherein the associated set of pre-defined characteristics comprises one or more of a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, and/or a language.

17. The method of claim 9 wherein the third party is one or more of a third party media provider, a third party service provider, and a third party sales provider.

18. The method of claim 9 wherein the sharing uses the communication network.

19. A system supporting communication of activity information to support user and user base profiling and consumption feedback in a communication network, the system comprising:

a television display at a first location;

a storage for storing media, at the first location, the storage having an associated network address;

a user interface accessible via the television display, the user interface supporting the selection of media for consumption;

set top box circuitry, at the first location, communicatively coupled to the storage to support consumption of the selected media; and

server software that receives, via a communication network, data comprising the associated network address, a user identifier, and information related to the media selected for consumption, and responds by storing at least a portion of the received data, the server software sending notification of a media request to a second location based on a determination as to whether a set of pre-defined characteristics associated with the requested media matches at least one parameter related to monitoring media consumption activity at the first location.

20. The system of claim 19 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data.

21. The system of claim 19 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

22. The system of claim 19 wherein the associated network address is one or more of an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number (ESN).

23. The system of claim 19 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

24. The system of claim 19 wherein the server software communicates, to the set top box circuitry, at least one parameter related to monitoring media consumption activity.

25. The system of claim 24 wherein the at least one parameter comprises a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, a language, information identifying the user, information indicating whether the user may be contacted, and information indicating how information related to the media request may be used.

26. The system of claim 19 wherein the server software shares, with a third party, information derived from the received data.

27. The system of claim 19 wherein the information related to media selected for consumption comprises one or more of a title, a subject, a time period, a genre, an artist, a media channel type, a mode, a language, information identifying the user, and/or information indicating whether the user may be contacted.

28. A system supporting communication of activity information to support user and user base profiling and consumption feedback in a communication network, the system comprising:

set top box circuitry, at a first location, communicatively coupled to storage having an associated network address, at the first location, to support consumption of media selected via a user interface accessible via a television display; and

software that receives, via a communication network, data comprising the associated network address, a user identifier, and information related to the media selected for consumption, and responds by storing at least a portion of the received data, the software sending notification of a media request to a second location based on a determination as to whether a set of pre-defined characteristics associated with the requested media matches at least one parameter related to monitoring media consumption activity at the first location.

29. The system of claim 28 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data.

30. The system of claim 28 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

31. The system of claim 28 wherein the associated network address is one or more of an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number (ESN).

32. The system of claim 28 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

33. The system of claim 28 wherein the software communicates, to the set top box circuitry, at least one parameter related to monitoring media consumption activity.

34. The system of claim 33 wherein the at least one parameter comprises a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, a language, information identifying the user, information indicating whether the user may be contacted, and information indicating how information related to the media request may be used.

35. The system of claim 28 wherein the software shares, with a third party, information derived from the received data.

36. The system of claim 28 wherein the information related to media selected for consumption comprises one or more of a title, a subject, a time period, a genre, an artist, a media channel type, a. mode, a language, information identifying the user, and/or information indicating whether the user may be contacted.

37. The system of claim 28 wherein the software comprises server software.

EVIDENCE APPENDIX
(37 C.F.R. § 41.37(c)(1)(ix))

- (1) U.S. 2002/0112239 (“Goldman”), entered into record by Examiner in November 8, 2007 Office Action.

RELATED PROCEEDINGS APPENDIX
(37 C.F.R. § 41.37(c)(1)(x))

Not applicable.